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Allied General Fire and Sec., Inc. v. St. Luke's  
Regional Medical Center Appellant's Brief Dckt.  
41045

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ALLIED GENERAL FIRE AND SECURITY, INC.,

Plaintiff,

vs.

ST. LUKE'S REGIONAL MEDICAL CENTER, and  
DOES 1-10,

Defendants.

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ST. LUKE'S REGIONAL MEDICAL CENTER,  
LTD., an Idaho corporation, and ST. LUKE'S MAGIC  
VALLEY REGIONAL MEDICAL CENTER, LTD.,  
an Idaho corporation,

Interpleaders,

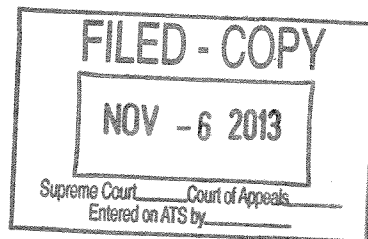
vs.

ALLIED GENERAL FIRE AND SECURITY, INC.,  
an Idaho corporation; DEBEST FIRE, INC., an Idaho  
corporation; and JANE DOES I-X; and XYZ  
CORPORATIONS I-XV.

Interpleader Respondents.

Supreme Court Case No. 41045

Fourth Judicial District Court  
Case No. CV-OC-12-02812



**DEBEST FIRE, INC'S APPELLANT BRIEF**

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APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA  
HONORABLE MIKE WETHERELL, DISTRICT JUDGE, PRESIDING

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## **I. INTRODUCTION**

This appeal challenges the validity of a mechanic and materialman lien based on the lien's failure to adhere to the verification language mandated by I.C. 45-507(4). While the issue at hand is critically important to the parties, the law on the matter is well established with some very recent appellant case law providing clear guidance. Therefore, Appellant has intentionally endeavored to keep this brief concise and to the point.

## **II. STATEMENT OF FACTS**

Although the facts pertaining to the relationship between Appellant and Respondent are complicated, the facts relevant to the limited issue presented on appeal are simple and relatively undisputed. The parties come before this court seeking redress from a dispute that arose out of the payment for services rendered and materials supplied, in the construction of a hospital facility in Twin Falls, Idaho. On July 15, 2009 the Appellant, DeBest Fire Inc. d.b.a. DeBest Fire Protection (hereinafter "DeBest Fire") obtained a contract with Saint Luke's Regional Medical Center (hereinafter "Saint Luke's") to install a fire suppression system in the new hospital. *R.*, pp. 69-74. The Respondent, Allied General Fire and Security, Inc. (hereinafter "Allied") contracted with DeBest Fire to provide part of the services and materials. Eventually a dispute arose as to the amount of money Respondent was entitled to under its contract with DeBest Fire. *R.*, p. 98, ¶ 7. Rather than litigating that dispute through a breach of contract action against DeBest Fire, Respondent recorded a lien on the Saint Luke's real property (*R.*, p. 75) and initiated suit against Saint Luke's on August 31, 2011. *R.*, pp. 8-21. This lien prompted Saint Luke's to interplead the disputed money, \$62,995.67, with the District Court. *R.*, pp. 13-21. DeBest Fire intervened and made a cross-claim against the deposited funds under its undisputed contract with Saint Luke's.

Saint Luke's and DeBest Fire moved for summary judgment against Respondent seeking to have the lien invalidated as the lien was patently defective since it was not verified under oath. *R.*, pp. 51-64 and 84-86. Saint Luke's and DeBest Fire requested the court find that DeBest Fire was rightfully entitled to the interpleaded funds. The District Court denied summary judgment and ruled as a matter of law that Allied's lien was legally valid. *R.*, pp. 112-126. DeBest Fire hereby appeals the lower court's summary judgment decision. *R.*, pp. 137-140.

The court's ruling on Allied's lien is essential to DeBest Fire since, pursuant to Idaho Law, lien judgment creditors have rights senior to unsecured judgment creditors. DeBest Fire's contract judgment would be considered unsecured as DeBest Fire was unable to file any liens against the property due to a series of lien waivers DeBest Fire was required to execute to receive various progress payments from St. Luke's.

### **III. ISSUE PRESENTED ON APPEAL**

Did the court err in ruling that Respondent's lien contained appropriate language to satisfy the oath mandated by Idaho Code § 45-507 and thus err in denying St. Luke's and DeBest Fire's Motion for Summary Judgment?

### **IV. ARGUMENT**

#### **A. Standard of Review.**

When reviewing an order for summary judgment, the Court exercises a de novo standard of review and applies the same standard used by the trial court in ruling on a motion for summary judgment. *Stonebrook Const., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 929 (2012). Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). When a

motion for summary judgment is presented, all controverted facts are liberally construed in favor of the non-moving party and all reasonable inferences that can be drawn from the record are construed in favor of the non-moving party. *Fuller v. Callister*, 150 Idaho 848 (2011).

### **B. Application of Law to Issue on Appeal**

A claim of lien is not valid unless it substantially complies with Idaho Code § 45-507. *ParkWest Homes, LLC v. Barnson*, 149 Idaho 603, 605 (2010). Idaho Code § 45-507(4) requires that a claim of lien "must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just." Idaho Code § 45-507. Therefore, in order for a claim of lien to substantially comply with the requirements of Idaho Code Section 45-507(4), the claim of lien must contain the requisite verification. See *ParkWest Homes*, at 606-07. To guide the determination of whether a claim of lien contains the requisite verification for the purposes of the mechanic's lien statutes, the Idaho Supreme Court has highlighted the distinction that "[a]n acknowledgement is not verification by oath." *First Federal Savings Bank of Twin Falls v. Riedesel Engineering, Inc.* 154 Idaho 626, 637 (2012) (citing *ParkWest Homes*, 149 Idaho at 607). Consequently, if a claim of lien only contains an acknowledgement, not verification, the lien is invalid.

This court, in the Riedesel case as recent as last year, made the difference clear. The language in the lien at issue in that case stated:

On this 23rd day of October, 2008, before me, a Notary Public for the State of Idaho personally appeared AARON L WERT, known or identified to me, to be the Secretary-Treasurer of RIEDESEL ENGINEERING, INC., and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same (*Riedesel at 637*).

The Court held that this language did not constitute verification for purposes of Idaho Code

§ 45-507(4) and merely constituted an acknowledgement, which was insufficient as a matter of law for compliance with the mechanic's lien statutes.

[The lien] statement is not sufficient because it does not state that Mr. Wert was sworn by a person authorized to administer oaths. Although a notary public is authorized to administer oaths the claim of lien does not state that the notary public did so in this case. The notary did not certify that Mr. Wert was sworn before the notary. The notary only certified that Mr. Wert was the person who signed the claim of lien on behalf of the corporation and that Mr. Wert acknowledged that the corporation executed it. ... Because claimant's second lien does not state that it was sworn to before someone authorized to administer oaths, the claim of lien does not comply with Idaho Code §45-507(4), and it is void. *Id.* at 638 (internal citations omitted).

The notary clause at issue in this case is almost identical to the language at issue in *Riedesel, R.*, p. 75. A side-by-side comparison highlights the similarities:

NOTARY CLAUSE	
<i>Allied Fire &amp; Security Inc.</i>	<i>Riedesel Engineering, Inc.</i>
On this 31st day of August, 2011, before me a notary public for Idaho, personally appeared Kenneth Webster, known or identified to me to be the President of the corporation that executed the within instrument or the person who executed the within instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.	On this 23rd day of October, 2008, before me, a Notary Public for the State of Idaho personally appeared AARON L. WERT, known or identified to me, to be the Secretary–Treasurer of RIEDESEL ENGINEERING, INC., and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.
<b>Claim of Lien, <i>R.</i>, p. 175</b>	<b>Riedesel at 637</b>

Accordingly, the acknowledgment found in Allied's Claim of Lien does not satisfy the requirement in Idaho Code Section 45-507(4) that a claim of lien be verified by the oath of the claimant. Allied's lien is invalid.

Further, there are no other statements in the Claim of Lien that can satisfy the verification requirement of Idaho Code § 45-507(4). While the Claim of Lien does contain a statement signed by Kenneth Webster, Allied's President, that statement does not as a matter of law



constitute a verification under oath. Coincidentally the language in this part of Allied's lien is also astonishingly similar to the language used in the *Riedesel* case:

<b>CLAIMANT'S LANGUAGE</b>	
<i>Allied Fire &amp; Security Inc.</i>	<i>Riedesel Engineering, Inc.</i>
<b>I, Kenneth Webster, do swear, depose, and say:</b>	<b>I, AARON L. WERT, being first duly sworn, depose and say:</b>
That I am the President of Allied General Fire & Security, Inc., and that on behalf of the Claimant, I do swear that I have read the above and foregoing claim and I know the contents thereof and that the same is true. I also believe the above and foregoing claim to be just, and that all just credits and offsets have been fully allowed. Date this 31st day of August, 2011.	That I am the Secretary–Treasurer of Riedesel Engineering, Inc., that I have read the within and foregoing Claim of Lien, know the contents thereof, and state that the same is true of my knowledge, and I believe the same to be just, and that it contains, among other things, a correct statement of Claimant's demands,
<b>Claim of Lien, R., p. 175 (emphasis added)</b>	<b>Riedesel at 637 (emphasis added)</b>

Once again, the Idaho Supreme Court has expressly held this language to be insufficient. *See Riedesel* at 637. In that case, the Court reasoned that this statement by the claimant was insufficient because there is nothing stating that the notary public had actually sworn in the individual, and the notary did not certify in the claim of lien that she had sworn in the individual. *Id.* Under these circumstances, the Court found the lien to be void.

Similarly in this case, the Claim of Lien does not state that the notary public actually swore in Webster, and the Claim of Lien did not contain a certification by the notary that Webster had been sworn in by and before her. Respondent's Claim of Lien does not comply with Idaho Code § 45-507(4) and is therefore void.

### **C. Lower Court's Error and Motivation**

Despite Allied's lien language being similar to the inadequate *Riedesel* language the District Court upheld the Allied lien stating "Here, the nature of the oath sworn by Mr. Webster in this case is significantly different than that of the oath sworn by the claimant in *Riedesel*." *R.*,

*p. 122, ¶ 4.* A factual comparison of the two liens and the language contained therein does not support the lower court's finding that they were "significantly different." A review of the entirety of the Court's order reveals that it actually ruled in Allied's favor simply because it did not wish to adopt this Court's ruling in *Riedesel*:

[T]here would seem to be no justification whatsoever for building still further upon this extra-statutory construction by erecting a new edifice of pure formalism that divests materialmen of the reasonable inference that an oath sworn in front of a notary constitutes a "claim...verified by the oath of the claimant." Certainly, the Supreme Court offered no justification for its decision beyond the bare declaration that the claimant's efforts were a mere "acknowledgement," which in any event is a conclusion, not an explanation. Had the Supreme Court intended to establish a sweeping new precedent in this area, it surely would have elaborated on its holding in far greater detail than it did. *R.*, *pp. 121-122.*

Further, the District Court seemed to take a very unusual stance in all but acknowledging that its ruling was in direct contrast to valid and binding Supreme Court case law when it stated in its conclusion:

The Court acknowledges that if it has erred on the issue of the verification of the mechanic's lien held by Allied, and has misread the Supreme Court's intention in *Riedesel*, then interpleader would be the appropriate course of action in this case. Should St. Luke's or DeBest wish to appeal this issue, the Court would consider granting a motion brought under Rule 54(b) to facilitate it, as this appears to be an appropriate case for an interlocutory appeal. *R.*, *pp. 125.*

Not surprisingly, the parties now stand before this Court requesting review.

## **V. ATTORNEY FEES**

Appellant hereby requests costs and attorney's fees on appeal pursuant to I.A.R., I.R.C.P. 54(e) and Idaho Code § 12-120(3) as the dispute between DeBest Fire, Allied, and Saint Luke's all arose out of various commercial transactions, and pertain to the purchase and sale of goods and services.

## VI. CONCLUSION

In conclusion, Appellant respectfully requests this court reverse the District Court's *Order re: Motion for Summary Judgment* as the District Court failed to follow clear existing Supreme Court precedent. Respondent's Claim of Lien should be found to be void for failure to comply with the requirements of Idaho Code § 45-507(4).

Respectfully submitted this 6<sup>th</sup> day of November, 2013.

RISCH ♦ PISCA, PLLC  
Attorneys for Appellant, DeBest Fire, Inc.

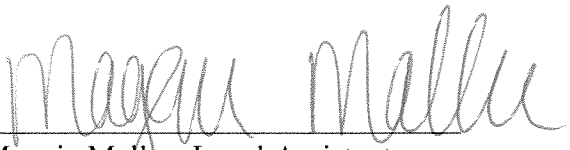
  
\_\_\_\_\_  
JASON S. RISCH

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of November, 2013, I caused to be served a true and correct copy of the foregoing **APPELLANT'S BRIEF** as follows:

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\_\_\_\_\_  
Maggie Mallea, Legal Assistant